

MEMORANDUM

DATE: February 15, 2008

TO: Ms. Hansella Cannon, Acting Director
Division of Services for Aging and Adults with Physical Disabilities

FROM: Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

RE: Draft Personal Attendant Services (PAS) Service Specifications

The State Council for Persons with Disabilities (SCPD) has reviewed the Division of Services for Aging and Adults with Physical Disabilities draft Personal Attendant Services Service Specifications. Under the Community-based Services Act (attached), the SCPD serves as the advisory council to the PAS program and all regulations, policies and guidelines are subject to review and comment by the SCPD (Title 16 Del.C. §§9406-9407). Council appreciates the opportunity to comment and has the following observations and recommendations on the specific sections.

Section 1.0: Service Definition

Section 1.1: Insert “mental or” prior to “physical” and substitute “or” for “and” prior to “mobility” to conform to Title 16 Del.C. §9403(5). The statute is very clear that persons with mental disabilities alone may qualify for the PAS. Someone with Alzheimer’s or TBI may require assistance with personal hygiene, dressing and grooming, food preparation, etc. not because of physical limitations but because of cognitive or memory impairments. Moreover, by using the conjunctive term “and”, DSAAPD limits eligibility to individuals who require services in 3 domains (functions of daily living; self-care; mobility).

Section 1.2: This section is grammatically infirm. Its purpose is also unclear. To comport with Title 16 Del.C. §9404(5)c, the following could be substituted: “A consumer may exercise rights through a guardian or appointed representative.”

Section 1.3: This section is convoluted. The following could be substituted: “The consumer shall be affirmatively supported to direct services contained in the consumer’s Individual Service Plan (ISP).”

Section 2.0: Eligibility

Section 2.1: Substitute “attendant(s)” for “attendant”. Consumers may use more than 1 attendant. See also Section 3.2.5.1.

Section 2.2 conflicts with the statute by only referring to “physical” disabilities and is otherwise underinclusive. It would be preferable and more meaningful to simply recite the standards in Title 16 Del.C. §9403(5).

Section 3.0: Service Activities

In general, SCPD recommends that “provider agency” be defined. If the Division anticipates having more than one provider agency, that should be reflected more clearly in the service specifications.

Section 3.1: Substitute “attendant(s)” for “attendant”.

Section 3.2: The first part of this section should be deleted since it is redundant. It repeats Section 3.1. Section 3.2 could simply recite as follows: “The ISP shall contain the following:”

Section 3.2.1: Substitute: “For an initial ISP, goals for service as developed between the DSAAPD Case Manager and consumer and as defined in the Service Referral Form.”

Section 3.2.5.4: Delete this section since the consumer is the employer and the consumer is the only one that needs to know the attendants’ other employer obligations. It does not need to be contained in the ISP which is reviewed by the provider agencies.

Section 3.2.6: Substitute: “Confirmation of the completion of attendant and/or consumer training.”

Section 3.2.7: Substitute “attendant(s)” for “attendant”.

Sections 3.2.8 and 3.2.9 do not “fit” within Section 3.2 which covers only the contents of the ISP. The concepts reflected in Sections 3.2.8 and 3.2.9 should be transferred to Section 7.0.

Section 3.3: It would be preferable to adopt the statutory list of basic services [Title 16 Del.C. §9403(3)]. Otherwise, the current Section 3.3 is underinclusive. For example, help with use of medical and non-medical equipment, devices, or assistive technology is omitted.

Section 3.4: This section is very problematic and confusing. “On-the-job support” could be a basic service. For example, toileting assistance at work or help with job-related AT qualifies as a basic service. Cooking and meal preparation is clearly a basic service [Title 16 Del.C. §9403(3)c5]. “Assistance with non-technical, routine care of assistive devices” is clearly a basic service [Title 16 Del.C. §9403(3)b]. For clarity, DSAAPD should adopt the statutory nomenclature of “basic services” and “ancillary services” and incorporate the definitions of these terms verbatim from the statute. It is confusing to substitute “support services and companion services” for “ancillary services” since all the services (basic and ancillary) are “support” services. Moreover, DSAAPD’s classification of services under Sections 3.3 and 3.4 conflict with the statute in many contexts.

Section 5.0: Service Unit

Section 5.3: Insert “or initial service site” after home. It is possible for a consumer to only request attendant services at work or college. For example, the consumer may have a “smart house” or family supports at home and opt to use all allotted attendant services hours to facilitate employment or education. Title 16 Del.C. §9403(2) authorizes this approach. Services can be provided “within home or community environments”.

Section 6.0: Service Standards

Section 6.2: Substitute the following: “The consumer has the option of fulfilling the following functions:”. Title 16 Del.C. §9404(5)(a) contemplates encouragement of consumer fulfillment of itemized functions, but the consumer ultimately has the “option” of hiring, supervising, and paying attendants. In addition, as currently written, this section would exclude individuals who may not have the “capacity” to perform these functions. The statute does not exclude individuals who may not have the physical or mental capacity to perform the itemized functions.

Section 6.2.2: Insert “a” prior to “provider”.

Section 6.2.2.1 implies that a consumer who exhausts all attendants offered by a single agency is culpable and “at fault” and therefore will be effectively sanctioned by “subjection” to “counseling” and a requirement to “hire an attendant on their own”. The standard does not offer resort to another provider agency as an option. Substitute the following: “In the event a provider agency is unable to supply attendant(s) acceptable to a consumer, the consumer may be offered technical assistance to assess the consumer’s rationale for rejection of candidates or referred to another provider agency. “

Section 7.0: Administrative Requirements

Section 7.0: Amend the title as follows: “Administrative Requirements for Provider Agencies” and add the following introduction: The provider agencies shall adhere to the following standards:”

Section 7.3: Substitute “the provider is” for “they are” in the first sentence. Substitute “it is” for “they are” in the second sentence.

Section 7.4: Substitute: “If the consumer fails to establish service within 45 working days of the referral, DSAAPD will be notified. DSAAPD will then assess the reason for lack of initiation of service which may be followed by notice of intent to terminate eligibility.” The current standard lacks due process and categorically presumes there can be no justification for delays in initiation of services.

Section 7.6: This section refers to “this purpose” without identification of the purpose. Assuming the reference is intended to refer to emergencies, amend Section 7.5 by adding “, which may include use of subcontractors.” after the word “emergencies”. Sections 7.6.1 and 7.6.2 could then be renumbered as Sections 7.5.1 and 7.5.2 respectively.

Section 7.8: Insert “a” prior to “case”.

Section 7.8.4: Substitute “attendant(s)” for “attendant”.

Section 7.9.4: Substitute “attendant(s)” for “attendant”. Insert the following introductory phrase: “Despite provision of ISP-listed services,”. Otherwise, a provider could fail to clean and then claim the unsanitary conditions justify discontinuation of services.

Section 8.0: Monitoring Requirements

Section 8.1.6: If DSAAPD anticipates having more than one provider, it will need to ensure a uniform survey document so the Division can aggregate data for its annual report as required by Title 16 Del.C. §9404(7). Also, in theory, consumers may be discouraged to disclose dissatisfaction for fear of retribution if their comments are submitted to the provider. The system could be improved by having the survey instruments returned to the quality assurance personnel within the provider agencies and by requiring all comments in the surveys to be provided to DSAAPD verbatim in the report contemplated by Section 8.1.6.

Section “8.1.7” should be inserted before “Monitor that duties.....”. This provision is not “assigned” a section number.

Sections 8.1.8 and 8.1.8.1 should be deleted since family members are already required to go through the same process (e.g. background checks, training) as other attendants when hired. They have the same obligations as other attendants and therefore should not be subject to different requirements.

Miscellaneous

The statute [Title 16 Del.C. §9404(4)] requires DHSS to maintain “an impartial grievance system”. This requirement is omitted from these standards. Paradoxically, although this is designed to be a consumer-oriented program, DSAAPD has included many standards authorizing providers to complain to DSAAPD about a consumer [Sections 7.9.1 through 7.9.7] but there are no comparable provisions authorizing a consumer to complain to DSAAPD about providers. SCPD recognizes that a grievance procedure may be outlined in the current contract with the provider; however, there should be some reference to “an impartial grievance system” in the service specifications so consumers are aware that there is such a system.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations and recommendations on the draft service specifications. In addition, please provide me with your predispositions regarding Council’s observations and recommendations, and the Division’s path forward, by March 1, 2008.

cc: Mr. Guy Perrotti
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council

